IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC No.77 of 2008
ARJUN MISTRY
Versus
THE STATE OF BIHAR & ORS
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02 10.12.2008 In the instant writ application the petitioner has prayed for quashing the seizure list dated 21.11.2007, annexure 1 whereby the Forest Officer has seized the saw mill of the petitioner. He also prays for quashing the forwarding letter of Forest Officer, S.D.J.M, Sherghati for taking cognizance under Section 5(a)(b) and 14 of the Bihar Saw Mill Regulation Act 1990, for which respondent/Forest Officer is not entitled in view of Section 17 of the Bihar Saw Mill Regulation Act 1990 here in after referred to Saw Mill Act 1990. He also prayed for quashing the notice contained in confiscation case No. 66/2007 pending before the D.F.O. Gaya.

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Learned counsel for the petitioner submits that the son of the petitioner had applied for license of a Saw Mill, he deposited necessary license fees for the same to the tune of Rs. 3,000/-. Learned counsel for the petitioner submits that proviso to Section 5 of the Act provides that if no objection is made by the authority within 30 days from the date of deposit of license fees along with the application form, the applicant will be deemed to be licensee under the Act. Learned counsel for the petitioner submits that Jitendra Kumar son of the petitioner applied for such license along with fees and as no objection was taken within 30 days he

will be a deemed licensee under the Proviso to Section 5 of the aforesaid Act.

Learned counsel for the petitioner submits that he has challenged the seizure on the ground that the same has not been done in accordance with law. He states that Section 8 of the Act authorizes a licensing officer or any other person authorized by him to enter a Saw Mill and can inspect documents, registers and can make search and seizure. Learned counsel submits that the Government by its circular dated 16.9.2000 has notified that such persons who could be so authorized would not be below the rank of Range Officer can be authorized to make search and seizure.

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Rule 23 empowers Government to make rules by issuing necessary notifications. Besides this, the Government is also empowered to issue executive orders/ instructions in terms of Article 162 of the constitution to supplement the provisions where ever the provisions are silent. Such executive fiat can only supplement to the extent of filling up the gap and not amend, modify, supplant provisions of Act or Rules. In this respect we can rely on following decisions.

Sant Ram Vrs. State of Bihar reported in AIR 1967 SC 1710, Lalit Mohan Deb Vrs. Union of India reported in AIR 1972 SC 995, Maheshwar Singh Vrs State of Bihar reported in 2000 (4) PLJR 262.

The circular of the Government does not offend or

supplant section 8 of Saw Mill Regulation Act. It has categorised that a person below the rank of Range Officer would not be authorized to make search and seizure while exercising power under Section 8 of the Saw Mill Act 1990. The circular supplements the provisions of this Act and the State is competent to do so.As such this court does not find any illegality in the Government circular defining that person below the rank of Range officer cannot be authorized to make search and seizure.

In the instant case an officer of the rank of forester has made search and seizure. Thus a forester being an officer below the rank of a range officer is not authorized to make search and seizure under the Act. Such search and seizure is without due authorization of law.

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Learned counsel for the State submits that it is not the petitioner but his son who is the licensee and he alone should have challenged the seizure. He further submits that this petitioner was found indulging in acts which are contrary to the provisions of the Act and a complaint has been forwarded to S.D.J.M. Sherghati for his prosecution. It appears from perusal of annexure 2 that seizure has been made showing this petitioner as the owner of the Saw Mill. The stand of petitioner is that as he has been shown owner, he has challenged the seizure.

The seizure contained in annexure 2 is itself defective as it was in name of the petitioner, in place of his son.

In view of the aforesaid circumstances, the seizure as contained in annexure 2 being made by a person not authorized under law is not sustainable in law and same is quashed. However, in the facts of the case, this court is not inclined to quash annexure 1 which is a complaint forwarded against this petitioner to the court of S.D.J.M. Sherghati for his prosecution.

With the aforesaid observation this application is allowed to the extent mentioned above.

Sym **(S.P.Singh, J.)**

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